

## Message Text

CONFIDENTIAL

PAGE 01 STATE 216172

53

ORIGIN DLOS-04

INFO OCT-01 EUR-12 EA-07 ISO-00 SSO-00 NSCE-00 USIE-00

INRE-00 ACDA-05 AGR-05 AID-05 CEA-01 CEQ-01 CG-00

CIAE-00 CIEP-01 OFA-01 COME-00 DODE-00 DOTE-00 EB-07

EPA-01 ERDA-05 FEAE-00 FMC-01 TRSE-00 H-02 INR-07

INT-05 IO-10 JUSE-00 L-03 NSAE-00 NSC-05 NSF-01

OES-03 OMB-01 PA-01 PM-04 PRS-01 SP-02 SS-15 /117 R

DRAFTED BY D/LOS:RHULL:MZ

APPROVED BY D/LOS - TUCKER SCULLY

L/OES - MR. OXMAN

EA/J - MR. DEMING

EUR/NE - MR. WORRELL

EUR/SOV - MR. COLBERT

EUR/WE - MR. BEIGEL(INFO)

----- 063109

O 111723Z SEP 75

FM SECSTATE WASHDC

TO AMEMBASSY LONDON IMMEDIATE

AMEMBASSY MOSCOW IMMEDIATE

AMEMBASSY TOKYO IMMEDIATE

AMEMBASSY PARIS IMMEDIATE

C O N F I D E N T I A L STATE 216172

E.O. 11652: GDS

TAGS: PLOS

SUBJECT: LOS: GROUP OF FIVE MEETING IN NEW YORK

REF: STATE 214619

1. THERE FOLLOWS TEXT OF US PROPOSED AMENDMENTS AND  
CONFIDENTIAL

CONFIDENTIAL

PAGE 02 STATE 216172

COMMENTS TO THE DISPUTE SETTLEMENT SINGLE NEGOTIATING

TEXT FOR DISTRIBUTION TO THE GROUP OF FIVE.

2. EMBASSIES ARE REQUESTED TO DELIVER TEXT OF THESE PROPOSED AMENDMENTS AND COMMENTS TO HOST GOVERNMENT LOS OFFICIALS AS SOON AS POSSIBLE. IN DELIVERING THEM YOU SHOULD NOTE THAT THEY ARE PRELIMINARY AND INCLUDE ISSUES WHICH REMAIN UNDER USG REVIEW. DEPT REGRETS INCONVENIENCE THAT LATENESS OF PROPOSED AMENDMENTS AND COMMENTS MAY CAUSE EMBASSIES. CLEARANCE DELAYS PREVENTED EARLIER TRANSMITTAL.

BEGIN TEXT

PROPOSED AMENDMENTS AND COMMENTS TO DISPUTE SETTLEMENT SINGLE NEGOTIATING TEXT

A. WE WILL ATTEMPT TO PRESENT A POSITION ON ARTICLE 13 NEXT WEEK.

B. ARTICLE 15(1) SHOULD BE AMENDED BY ADDING "OR LAWS OR REGULATIONS ESTABLISHED PURSUANT THERETO" AFTER "CONVENTION" IN LINE 3 AND BY ADDING "THE OWNER OR OPERATOR OF THE VESSEL, OR THE STATE OF NATIONALITY OF ANY PERSON DETAINED" AFTER "REGISTRY" IN LINE 4. THESE AMENDMENTS WILL PROVIDE NECESSARY PROTECTION FOR VESSELS AND INDIVIDUALS AND HELP RELIEVE FLAG STATES OF PROTECTIVE BURDENS.

C. ARTICLE 18(1) SHOULD BE AMENDED BY ADDING "(III BY ABUSING OR MISUSING THE RIGHTS CONFERRED UPON IT BY THIS CONVENTION (ABUS OU DETOURNEMENT DE POUVOIR) TO THE DISADVANTAGE OF ANOTHER CONTRACTING PARTY" AT THE END OF THE PARAGRAPH. THE AMENDMENT HELPS BALANCE THE INTERESTS OF COASTAL AND NONCOASTAL STATES WITHIN THE ECONOMIC ZONE.

D. SINCE THERE IS UNNEEDED REPETITION IN ANNEX IC, SUBSTITUTE THE FOLLOWING PROVISIONS, BASED LARGELY ON THE ICJ STATUTE, FOR ARTICLE 2(2), ARTICLE 3(2) AND 3(3), AND ARTICLE 4 OF CHAPTER I OF THE STATUTE OF THE LAW OF THE SEA TRIBUNAL AND RENUMBER THE REMAINING PROVISIONS  
CONFIDENTIAL

CONFIDENTIAL

PAGE 03 STATE 216172

OF THE CHAPTER.

ARTICLE 2

"2. IN THE TRIBUNAL AS A WHOLE THE REPRESENTATION OF THE PRINCIPAL LEGAL SYSTEMS AND MARINE INTERESTS OF THE WORLD AND EQUITABLE GEOGRAPHICAL DISTRIBUTION SHALL BE ASSURED. SUCH MARINE INTERESTS SHALL INCLUDE, WITH

RESPECT TO ALL OF THE WORLD'S MARINE AREAS, NAVIGATION AND OVERFLIGHT, FISHING, SEABED EXPLORATION AND EXPLOITATION, LENGTH OF COASTLINE, SIZE OF ECONOMIC ZONE AND CONTINENTAL SHELF, ABSENCE OF ANY COASTLINE, GEOGRAPHIC DISADVANTAGE, ECONOMIC DEPENDENCE ON MARINE AREAS, RELIANCE ON MARINE AREAS FOR NATIONAL ECONOMIC DEVELOPMENT, EXPOSURE TO ENVIRONMENTAL HAZARDS, SCIENTIFIC RESEARCH, AND DEVELOPMENT OF MARINE TECHNOLOGY.

ARTICLE 3

2. THE MEMBERS OF THE TRIBUNAL SHALL BE ELECTED BY THE GENERAL ASSEMBLY AND BY THE SECURITY COUNCIL FROM A LIST OF PERSONS NOMINATED BY THE NATIONAL GROUPS IN THE PERMANENT COURT OF ARBITRATION, IN ACCORDANCE WITH THE FOLLOWING PROVISIONS.

3. IN THE CASE OF STATES PARTIES TO THE LAW OF THE SEA

CONFIDENTIAL

CONVENTION NOT REPRESENTED IN THE PERMANENT COURT OF ARBITRATION, CANDIDATES SHALL BE NOMINATED BY NATIONAL GROUPS APPOINTED FOR THIS PURPOSE BY THEIR GOVERNMENTS UNDER THE SAME CONDITIONS AS THOSE PRESCRIBED FOR MEMBERS OF THE PERMANENT COURT OF ARBITRATION BY ARTICLE 44 OF THE CONVENTION OF THE HAGUE OF 1907 FOR THE PACIFIC SETTLEMENT OF INTERNATIONAL DISPUTES. AT THE OPTION OF THE STATES CONCERNED, SUCH GROUPS CAN BE ORGANIZED ON A REGIONAL BASIS.

4. THE CONDITIONS UNDER WHICH A STATE WHICH IS A PARTY TO THE PRESENT CONVENTION BUT IS NOT A MEMBER OF THE UNITED NATIONS MAY PARTICIPATE IN ELECTING THE MEMBERS  
CONFIDENTIAL

CONFIDENTIAL

PAGE 04 STATE 216172

OF THE TRIBUNAL SHALL, IN THE ABSENCE OF A SPECIAL AGREEMENT, BE LAID DOWN BY THE GENERAL ASSEMBLY UPON RECOMMENDATION OF THE SECURITY COUNCIL.

5. NOMINATIONS MAY ALSO BE MADE BY ANY SPECIALIZED AGENCY OF THE UNITED NATIONS OR REGIONAL OR OTHER INTERGOVERNMENTAL ORGANIZATION WITH A SUBSTANTIAL INTEREST IN THE OPERATION OF THE PRESENT CONVENTION.

ARTICLE 4

1. AT LEAST THREE MONTHS BEFORE THE DATE OF THE ELECTION, THE SECRETARY-GENERAL OF THE UNITED NATIONS SHALL ADDRESS A WRITTEN REQUEST TO THE MEMBERS OF THE PERMANENT COURT OF ARBITRATION BELONGING TO THE STATES

WHICH ARE PARTIES TO THE LAW OF THE SEA CONVENTION, AND TO THE MEMBERS OF THE NATIONAL GROUPS APPOINTED UNDER ARTICLE 3, PARAGRAPH 2, INVITING THEM TO UNDERTAKE, WITHIN A GIVEN TIME, BY NATIONAL GROUPS, THE NOMINATION OF PERSONS IN A POSITION TO ACCEPT THE DUTIES OF A MEMBER OF THE TRIBUNAL. SIMILAR REQUESTS SHALL BE SENT TO THE SPECIALIZED AGENCIES OR REGIONAL OR INTERGOVERNMENTAL ORGANIZATIONS AUTHORIZED TO MAKE NOMINATIONS PURSUANT TO ARTICLE 3, PARAGRAPH 5.

2. NO GROUP, AGENCY, OR ORGANIZATION MAY NOMINATE MORE THAN FOUR PERSONS. NO MORE THAN TWO OF THE PERSONS NOMINATED BY ANY GROUP SHALL BE OF THEIR OWN NATIONALITY. IN NO CASE MAY THE NUMBER OF CANDIDATES NOMINATED BY A GROUP, AGENCY, OR ORGANIZATION BE MORE THAN DOUBLE THE NUMBER OF SEATS TO BE FILLED.

#### ARTICLE 5

BEFORE MAKING THESE NOMINATIONS, EACH NATIONAL GROUP IS RECOMMENDED TO CONSULT ITS HIGHEST COURT OF JUSTICE, ITS

LEGAL FACULTIES AND SCHOOLS OF LAW, AND ITS NATIONAL INSTITUTIONS DEVOTED TO THE STUDY OF THE LAW OF THE SEA.

CONFIDENTIAL

CONFIDENTIAL

PAGE 05 STATE 216172

#### ARTICLE 6

1. THE SECRETARY-GENERAL SHALL PREPARE A LIST IN ALPHABETICAL ORDER OF ALL THE PERSONS THUS NOMINATED. SAVE AS PROVIDED IN ARTICLE 11, PARAGRAPH 2, THESE SHALL BE THE ONLY PERSONS ELIGIBLE.

2. THE SECRETARY-GENERAL SHALL SUBMIT THIS LIST TO THE GENERAL ASSEMBLY AND TO THE SECURITY COUNCIL.

#### ARTICLE 7

THE GENERAL ASSEMBLY AND THE SECURITY COUNCIL SHALL PROCEED INDEPENDENTLY OF ONE ANOTHER TO ELECT THE MEMBERS OF THE TRIBUNAL.

#### ARTICLE 8

AT EVERY ELECTION, THE ELECTORS SHALL BEAR IN MIND NOT ONLY THAT THE PERSONS TO BE ELECTED SHOULD INDIVIDUALLY POSSESS THE QUALIFICATION REQUIRED, BUT ALSO THAT IN THE BODY AS A WHOLE THE REPRESENTATION OF THE PRINCIPAL

LEGAL SYSTEMS AND MARINE INTERESTS OF THE WORLD SHALL BE ASSURED.

ARTICLE 9

1. THOSE CANDIDATES WHO OBTAIN AN ABSOLUTE MAJORITY OF VOTES IN THE GENERAL ASSEMBLY AND IN THE SECURITY COUNCIL SHALL BE CONSIDERED AS ELECTED.

2. ANY VOTE OF THE SECURITY COUNCIL, WHETHER FOR THE ELECTION OF JUDGES OR FOR THE APPOINTMENT OR MEMBERS OF THE CONFERENCE ENVISAGED IN ARTICLE 11, SHALL BE TAKEN WITHOUT ANY DISTINCTION BETWEEN PERMANENT AND NON-PERMANENT MEMBERS OF THE SECURITY COUNCIL.

3. IN THE EVENT OF MORE THAN ONE NATIONAL OF THE SAME STATE OBTAINING AN ABSOLUTE MAJORITY OF THE VOTES BOTH OF THE GENERAL ASSEMBLY AND OF THE SECURITY COUNCIL, THE ELDEST OF THESE ONLY SHALL BE CONSIDERED AS ELECTED.

CONFIDENTIAL

CONFIDENTIAL

PAGE 06 STATE 216172

ARTICLE 10

IF, AFTER THE FIRST MEETING HELD FOR THE PURPOSE OF THE ELECTION, ONE OR MORE SEATS REMAIN TO BE FILLED, A SECOND AND, IF NECESSARY, A THIRD MEETING SHALL TAKE PLACE.

ARTICLE 11

1. IF, AFTER THE THIRD MEETING, ONE OR MORE SEATS STILL REMAIN UNFILLED, A JOINT CONFERENCE CONSISTING OF SIX MEMBERS, THREE APPOINTED BY THE GENERAL ASSEMBLY AND THREE BY THE SECURITY COUNCIL, MAY BE FORMED AT ANY TIME AT THE REQUEST OF EITHER THE GENERAL ASSEMBLY OR THE SECURITY COUNCIL, FOR THE PURPOSE OF CHOOSING BY THE VOTE OF AN ABSOLUTE MAJORITY ONE NAME FOR EACH SEAT STILL VACANT, TO SUBMIT TO THE GENERAL ASSEMBLY AND THE SECURITY COUNCIL FOR THEIR RESPECTIVE ACCEPTANCE.

2. IF THE JOINT CONFERENCE IS UNANIMOUSLY AGREED UPON ANY PERSON WHO FULFILLS THE REQUIRED CONDITIONS, HE MAY BE INCLUDED IN ITS LIST, EVEN THOUGH HE WAS NOT INCLUDED IN THE LIST OF NOMINATIONS REFERRED TO IN ARTICLE 6.

3. IF THE JOINT CONFERENCE IS SATISFIED THAT IT WILL NOT BE SUCCESSFUL IN PROCURING AN ELECTION, THOSE MEM-

BERS OF THE TRIBUNAL WHO HAVE ALREADY BEEN ELECTED SHALL,  
WITHIN A PERIOD TO BE FIXED BY THE SECURITY COUNCIL,  
PROCEED TO FILL THE VACANT SEATS BY SELECTION FROM  
AMONG THOSE CANDIDATES WHO HAVE OBTAINED VOTES EITHER  
IN THE GENERAL ASSEMBLY OR IN THE SECURITY COUNCIL.

4. IN THE EVENT OF AN EQUALITY OF VOTES AMONG THE  
MEMBERS OF THE TRIBUNAL, THE ELDEST MEMBER SHALL HAVE A  
CASTING VOTE."

E. SUBSTITUTE "PRESIDENT OF THE LAW OF THE SEA TRIBUNAL"  
FOR "SECRETARY-GENERAL OF THE INTER-GOVERNMENTAL MARI-  
CONFIDENTIAL

CONFIDENTIAL

PAGE 07 STATE 216172

TIME CONSULTATIVE ORGANIZATION" IN ARTICLE 2 OF ANNEX  
IIB. THE AMENDMENT WILL PERMIT GREATER SUPPORT FOR THE  
PROCEDURE OUTLINED IN THIS ANNEX.

END TEXT KISSINGER

CONFIDENTIAL

NNN

## Message Attributes

**Automatic Decaptioning:** X  
**Capture Date:** 01 JAN 1994  
**Channel Indicators:** n/a  
**Current Classification:** UNCLASSIFIED  
**Concepts:** LAW OF THE SEA, SEABED, AGREEMENT DRAFT, TEXT, COMMITTEE MEETINGS, AMENDMENTS  
**Control Number:** n/a  
**Copy:** SINGLE  
**Draft Date:** 11 SEP 1975  
**Decaption Date:** 01 JAN 1960  
**Decaption Note:**  
**Disposition Action:** RELEASED  
**Disposition Approved on Date:**  
**Disposition Authority:** buchandr  
**Disposition Case Number:** n/a  
**Disposition Comment:** 25 YEAR REVIEW  
**Disposition Date:** 28 MAY 2004  
**Disposition Event:**  
**Disposition History:** n/a  
**Disposition Reason:**  
**Disposition Remarks:**  
**Document Number:** 1975STATE216172  
**Document Source:** CORE  
**Document Unique ID:** 00  
**Drafter:** RHULL:MZ  
**Enclosure:** n/a  
**Executive Order:** GS  
**Errors:** N/A  
**Film Number:** D750315-0314  
**From:** STATE  
**Handling Restrictions:** n/a  
**Image Path:**  
**ISecure:** 1  
**Legacy Key:** link1975/newtext/t19750961/aaaacbx1.tel  
**Line Count:** 299  
**Locator:** TEXT ON-LINE, ON MICROFILM  
**Office:** ORIGIN DLOS  
**Original Classification:** CONFIDENTIAL  
**Original Handling Restrictions:** n/a  
**Original Previous Classification:** n/a  
**Original Previous Handling Restrictions:** n/a  
**Page Count:** 6  
**Previous Channel Indicators:** n/a  
**Previous Classification:** CONFIDENTIAL  
**Previous Handling Restrictions:** n/a  
**Reference:** 75 STATE 214619  
**Review Action:** RELEASED, APPROVED  
**Review Authority:** buchandr  
**Review Comment:** n/a  
**Review Content Flags:**  
**Review Date:** 27 MAY 2003  
**Review Event:**  
**Review Exemptions:** n/a  
**Review History:** RELEASED <27 MAY 2003 by BoyleJA>; APPROVED <20 OCT 2003 by buchandr>  
**Review Markings:**

Margaret P. Grafeld  
Declassified/Released  
US Department of State  
EO Systematic Review  
06 JUL 2006

**Review Media Identifier:**  
**Review Referrals:** n/a  
**Review Release Date:** n/a  
**Review Release Event:** n/a  
**Review Transfer Date:**  
**Review Withdrawn Fields:** n/a  
**Secure:** OPEN  
**Status:** NATIVE  
**Subject:** LOS: GROUP OF FIVE MEETING IN NEW YORK  
**TAGS:** PLOS, XX  
**To:** LONDON MULTIPLE  
**Type:** TE  
**Markings:** Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 06 JUL 2006